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# Constitutional Law—Due Process—Right to Counsel

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government are so prevalent. As Mr. Justice Douglas put it, (in dissent at 156): "It makes a tyrant out of every contracting officer" at a time when the government controls an ever increasing share of the national product.

It seems doubtful, however, that the majority meant to rule out of the exception "gross mistake implying fraud." The majority opinion preceded its definition of the exception by stating "gross mistake implying bad faith is equated to fraud." If this has any purpose it must indicate that the Court is not eliminating review by the courts where there is gross mistake of such a nature that it implies bad faith. Furthermore, considering the findings of the Court of Claims, which went only so far as to say the decision of the department head was "arbitrary, capricious, and grossly erroneous," it appears that the Supreme Court was only restricting the exception to cases where fraud or gross mistake implying fraud was pleaded and proved. If this be so, then the Court is merely pouring old wine into old bottles and simply repeating what is said in *Ripley v. U. S.*, 222 U. S. 144 (1911), the court must find "gross mistake such as excluded the possibility of the exercise of an honest judgment," and make "a direct and unequivocal finding as to . . . bad faith." In any event, the Court has not clarified the rule which created an exception to the conclusiveness of such administrative decisions (the reason for granting certiorari) and it will undoubtedly face the problem again.

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## CONSTITUTIONAL LAW—DUE PROCESS—RIGHT TO COUNSEL

Petitioner filed a writ of habeas corpus alleging a violation of due process in that he was convicted by a Pennsylvania court on a plea of guilty without the benefit of counsel. Petitioner claimed that circumstances existed which deprived him of an opportunity and the capacity to defend himself adequately since: (1) he did not understand the nature of the charge of robbery when his guilty plea was entered and (2) that he was a "young,irresponsible boy," having spent several years in a mental institution. The petition was dismissed without a hearing. The United States Supreme Court reversed (5-4): and held that special circumstances were present which showed that without a lawyer, this defendant could not have had an adequate and fair defense. Two elements were stressed. First, that incarceration as a boy for imbecility, followed by repeated criminal offenses, indicates that the petitioner did not have the mental capacity to protect himself in the give and take of a courtroom trial. Second, that statements by officials, that the charged crime was only "breaking and entering," would make petitioner a victim of deception, inadvertent or intentional, when he pleaded guilty. *Palmer v. Ashe, Warden*, 342 U. S. 134 (1951).

The Sixth Amendment of the United States Constitution guarantees to an

accused the assistance of counsel in a criminal proceeding. *Johnson v. Zerbst,* 304 U. S. 458 (1938), *Walker v. Johnston,* 312 U. S. 275 (1941). The Sixth Amendment guarantee of counsel is not binding on the states as part of the Fourteenth Amendment's due process clause. *Betts v. Brady,* 316 U. S. 455 (1942). See also *Palko v. Connecticut,* 302 U. S. 319 (1937). However, an exception to the state's free hand exists where special circumstances are such that the lack of counsel would "violate a principle of justice so rooted in the traditions and conscience of our people so as to be ranked as fundamental." *Bute v. Illinois,* 333 U. S. 640, 659 (1948).

The presence of capital punishment, as a possible penalty, will be sufficient to require the benefit of counsel. *Powell v. Alabama,* 287 U. S. 45 (1932). However, in noncapital cases, in order to come within the due process clause, many factors are considered in determining whether there were special circumstances showing that lack of counsel resulted in an unfair trial. See *Betts v. Brady, supra.* An attorney was considered essential for the achievement of justice: (a) where the defendant was young and inexperienced in trial procedures, even though no complicated legal questions were involved. *Wade v. Mayo,* 334 U. S. 672 (1948); (b) where the accused was seventeen years old and the court made no attempt to advise him of the consequences of his plea. *Uveges v. Pennsylvania,* 335 U. S. 437 (1948); (c) where the person on trial was in his twenties, uneducated and a stranger in town. *House v. Mayo,* 324 U. S. 42 (1945); (d) where the defendant was eighteen years old and had only been in this country two years and didn't understand English, or American court procedure. *Marino v. Ragen, Warden,* 332 U. S. 561 (1947); (e) where there was evidence of deception on the part of the prosecution. *Smith v. O'Grady,* 312 U. S. 329 (1941); (f) where the judge misread the defendant's record and used sarcastic language when he addressed the accused. *Townsend v. Burke,* 334 U. S. 736 (1948); (g) where there was inadequate judicial guidance or protection furnished by the judge, although the defendant, in his thirties, conducted his own defense. *Gibbs v. Burke, Warden,* 337 U. S. 773 (1949).

Exceptional circumstances were not found: (a) where the defendants were advised of their rights of trial and of the consequences of a guilty plea. *Foster v. Illinois,* 332 U. S. 134 (1947); (b) where counsel was not appointed until the day of sentencing, any available defense being open to the defendant at the time. *Canizio v. New York,* 327 U. S. 82 (1946); (c) where a guilty plea was entered after the court had properly instructed the accused of his rights and the degree of proof necessary for conviction. *Carter v. Illinois,* 329 U. S. 173 (1947); (d) where eight convictions and numerous courtroom experiences made a thirty-four year old defendant "educated" as to trial procedure. *Gryger v. Burke, Warden,* 334 U. S. 728 (1948); (e) where the indictment was simple to understand and there was no claim that the defendant, a fifty-seven year old man, was incapable

of intelligently pleading guilty. *Bute v. Illinois, supra;* (f) where the issues were not so complex and the defendant was of ordinary intelligence, capable of caring for his own interests. *Betts v. Brady, supra.*

Elements which the Court has examined carefully and relied on in finding whether absence of counsel permitted an unfair trial can be categorized as follows: (1) the gravity of the crime, (2) the age and education of the defendant, (3) the conduct of the court or prosecuting officials and (4) the complicated nature of the charge and its possible defenses. In the instant case, the crime was one of gravity as is illustrated by a sentence of thirty years imprisonment; petitioner was a youth of twenty-one when convicted; the prosecution used deception by informing the defendant that he was pleading guilty to breaking and entering and not to robbery, and the differences between breaking and entering and robbery are not easily understood by even the average layman. See *Rice v. Olson,* 324 U. S. 786 (1945). These facts show sufficient "special circumstances" to require that the defendant be assisted by counsel or at least informed of his rights to such assistance. The additional fact of the defendant's general mental deficiency adds considerable weight to the Court's decision that the petitioner has been denied his liberty without due process of law.

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## LIFE INSURANCE—PASSAGE OF PROPERTY UNDER NEW OPTION HELD VIOLATIVE OF STATUTE OF WILLS

In 1925, the defendant company issued a life insurance policy to Arthur Corlies, who died in 1941. The proceeds of the policy were payable to his daughter Barbara. She elected the interest-option, (under which the insurer retained the funds, paying a guaranteed rate of interest to the beneficiary, who had the right to make withdrawals from the principal sum at any time, and in any amount). Instead of the annual interest payments as prescribed in the 1925 form, Barbara desired quarterly interest payments in accordance with the current practice. At this time, plaintiff was the husband of Barbara, and was named contingent payee under the "supplementary policy of insurance" issued by the company in compliance with the beneficiary's request; plaintiff to take any amount of the principal sum remaining at Barbara's death. Barbara and the plaintiff were subsequently divorced, and Barbara remarried. Upon Barbara's death, plaintiff brought an action for the proceeds of the policy. Decedent's executors, who were impleaded by the defendant, moved for a dismissal of plaintiff's complaint, and for a summary judgment. In granting impleaded defendant's motion, the Court held that the beneficiary's request for quarterly, instead of annual interest payments constituted a counter-offer, which defendant's acceptance ripened into a new contract uncon-